

CONFIDENTIAL SETTLEMENT DOCUMENT
PROTECTED PURSUANT TO FED. R. EVID. 408
April 29, 2004

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AISI/ACCCI COKE OVEN ENVIRONMENTAL TASK FORCE,)	
)	
)	
Petitioner,)	
)	No. 03-1167
v.)	
)	
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	
)	

SETTLEMENT AGREEMENT

WHEREAS, Petitioner, the AISI/ACCCI Coke Oven Environmental Task Force (“COETF”), filed the above captioned petition for review challenging a final action taken under the Clean Air Act (“CAA”) by the Respondent, United States Environmental Protection Agency (“EPA”), notice of which was entitled “National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks,” and published at 68 Fed. Reg. 18,008 (April 14, 2003);

WHEREAS, COETF’s petition challenges a new EPA rule (“Rule”), promulgated pursuant to section 112(d) of the CAA, 42 U.S.C. §§ 7412(d), and codified at 40 C.F.R. Part 63, Subpart CCCCC, which establishes national emission standards for hazardous air pollutants for the source category of “Coke Ovens: Pushing, Quenching, and Battery Stacks,” including

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emission limitations and work practice requirements for the control of hazardous air pollutants from pushing, quenching, soaking, and battery stacks at new and existing coke oven batteries;

WHEREAS, the COETF's petition challenges two aspects of the Rule, namely:

- (a) provisions requiring owners/operators of coke plants having a "pushing emission control device" ("PECD") to install, operate and maintain devices to monitor daily average fan motor amps at or above minimum levels established during initial performance tests or, alternatively, requiring owners/operators of coke plants having a PECD to install, operate and maintain devices to monitor daily average volumetric flow rate at the inlet of the control device and maintain daily average volumetric flow rate at or above minimum levels established during initial performance tests (codified at 40 C.F.R. §§ 63.7290, 63.7323(c), 63.7326(a)(4), 63.7330(d), 63.7331(g) and (h)); and
- (b) provisions requiring monthly inspections of pressure sensors, dampers, damper switches and other equipment important to the performance of the total emissions capture system, and further requiring that a facility's operation and maintenance ("O & M") plan include requirements to repair any defect or deficiency in the capture system before the next scheduled inspection (codified at 40 C.F.R. § 63.7300(c)(1));

WHEREAS, having consulted about the concerns raised by COETF in its petition, COETF and EPA (collectively the "Parties") now agree that certain revisions to the Rule, if incorporated into a revised Rule by EPA, would resolve COETF's challenge in this litigation;

WHEREAS, the Parties wish to implement this Settlement Agreement ("Agreement") to

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avoid protracted and costly litigation and to preserve judicial resources;

NOW, THEREFORE, the Parties, intending to be bound by this Agreement, hereby stipulate and agree as follows:

1. Within three days after this Agreement is executed by the Parties (i.e., signed), the Parties will jointly notify the Court, in writing, that the Parties have reached this Agreement, subject to completion of the procedures in paragraph 12 below; that the Parties anticipate that certain revisions to the Rule described in paragraph 2 below, if incorporated into a revised Rule by EPA, will resolve COETF's challenge in this litigation; and that, accordingly, the Parties mutually request that the Court's September 17, 2003, Order remain in place and that the COETF's petition be held in abeyance pending implementation of, and subject to, the terms of this Settlement Agreement.

2. Within 90 days after final approval of the Agreement by the Administrator, as described in paragraph 12, EPA shall sign and submit for publication in the Federal Register a notice of proposed rulemaking that proposes to make amendments to the Rule that are the same in substance as set forth in Attachment A to this Agreement. No later than 120 days after the close of the comment period on the proposal, EPA shall sign and submit for publication in the Federal Register a notice setting forth the Administrator's final decision on the issues covered by the proposal.

3. The Parties may extend the dates set forth in paragraph 2, or otherwise modify this Agreement, by written stipulation executed by counsel for the Parties and filed with the Court.

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4. The Parties agree that if any of the events set forth in this paragraph 4 occur, COETF shall have the right to request that the Court vacate its September 17, 2003, Order, and establish a revised date for briefing and oral argument, and EPA shall not oppose such a request:

- A. If within 90 days after completion by EPA of the public notice and comment period referenced in paragraph 12, EPA fails to sign and submit for publication in the Federal Register notice of a proposed rulemaking and/or notice of a direct final rule, that makes and/or proposes to make amendments to the provisions of 40 C.F.R. Part 63, Subpart CCCCC, that are the same in substance as set forth in Attachment A to this Agreement;
- B. If within 120 days from the close of the comment period on the proposal identified in paragraph 2, EPA fails to revise the provisions of 40 C.F.R. Part 63, Subpart CCCCC, in a manner and with substance the same as that set forth in Attachment A to this Agreement.

Before COETF may move to lift the stay of this case pursuant to subparagraphs A or B, above, COETF shall provide EPA with 20 business days advance written notice, unless providing such notice would conflict with a Court-ordered schedule or procedure. Upon EPA's receipt of such notice, and prior to the expiration of 20 days, the Parties shall undertake all reasonable efforts to resolve their dispute.

5. COETF shall not challenge in any court or administrative proceeding the validity of any EPA revision to 40 C.F.R. Part 63, Subpart CCCCC, that is conducted in accordance with

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paragraph 2 and that provides for the same in substance as that contained in Attachment A to this Agreement. COETF reserves any rights it may have to challenge in any court or administrative proceeding any portion of such revision that is not the same in substance as that contained in Attachment A to this Agreement.

6. Notwithstanding any other provision of this Agreement, if EPA performs all of the items contained in paragraph 2, the Parties shall promptly advise the Court in writing that they have resolved their dispute concerning COETF's challenge to the Rule and shall therewith file a joint stipulation of dismissal of petition for review No. 03-1167, in accordance with Rule 42 of the Federal Rules of Appellate Procedure, 20 days from the expiration of the 60-day period for filing petitions for review challenging the revised Rule, if no such petitions are timely filed in accordance with CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1). If such petitions challenging the revised Rule contemplated by paragraph 2 are timely filed, the Parties shall confer and promptly advise the Court in writing regarding their respective recommendations for the appropriate disposition of this case.

7. The Parties in their joint motion referred to in paragraph 1 shall advise the Court of the Parties' intention to continue submitting joint status reports at 90-day intervals, as required by the Court's September 17, 2003, Order.

8. Nothing in this Agreement shall be construed to limit or modify the discretion accorded EPA by the Clean Air Act or by general principles of administrative law. In addition, nothing in this Agreement shall be construed to limit or modify EPA's discretion to alter, amend,

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or revise any regulations, guidance, or interpretations EPA may issue in accordance with this Agreement from time to time or to promulgate or issue superceding regulations, guidance, or interpretations. The obligations imposed on EPA under this Agreement can only be undertaken using appropriated funds. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable federal statute.

9. Unless otherwise specified by the Parties in writing, the Parties agree that each side shall bear its own cost and fees associated with the implementation of this Agreement and EPA's proposal and promulgation of a revised Rule which revises the provisions of 40 C.F.R. Part 63, Subpart CCCCC, in a manner and with substance the same as that set forth in Attachment A to this Agreement.

10. Except as set out in this Agreement, the Parties retain all rights they may otherwise have.

11. The undersigned representatives of each Party certify that they are fully authorized by the Party that they represent to bind that respective Party to the terms of this Agreement.

12. The Parties agree and acknowledge that before this Agreement is final, EPA must provide notice in the Federal Register and an opportunity for public comment pursuant to CAA § 113(g), 42 U.S.C. § 7413(g). After this Agreement has undergone an opportunity for notice and comment, the Administrator and/or the Attorney General, as appropriate, shall promptly consider any such written comments in determining whether to withdraw or withhold his consent

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to the Agreement, in accordance with section 113(g) of the Clean Air Act. This Agreement shall become final on the date that EPA provides written notice of such finality to COETF.

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ENVIRONMENTAL TASK FORCE

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On Behalf of the United States

On Behalf of the AISI/ACCCI Coke Oven
Environmental Task Force